

March 18, 1999

**COMPLAINT 1998 - NOS. 4 AND 5
Constituent Mailing - Content - Timing**

REASONABLE CAUSE DETERMINATION “ ORDER OF DISMISSAL

I. Nature of the Complaints

Two separate complaints allege that Representative Tom Huff violated RCW 42.52.180 and RCW 42.52.185 by mailing prior to December 1, 1998, a brochure to his constituents at public expense which extols the Republican Party agenda and criticizes Democrats and the Governor.

II. Procedural History

Complaint 1998 - No. 4 is dated December 12, 1998, and Complaint 1998 - No. 5 is dated December 21, 1998. Both complaints were transmitted to the Office of the Attorney General for investigation pursuant to RCW 42.52.450, because they allege a violation of RCW 42.52.180 by a legislator.

An investigation was conducted pursuant to RCW 42.52.420. The results were submitted to the Board in an investigative report and the Board deliberated on the complaints at its regular meeting on March 18, 1999.

III. Determination of Allegations of Fact

The complaints focus on a document entitled "Republicans protecting taxpayers" which Representative Huff mailed to his constituents on November 27, 1998. The document was produced and mailed using state staff time and resources. A copy of the document is attached to this Determination.

In general, the document extols the accomplishments of Republicans in the House of Representatives and criticizes the Governor and Democratic legislators.

IV. Determination of Allegations of Ethics Law Violations

A. Relevant Statutes

RCW 42.52.180 prohibits the use of state resources for the purpose of assisting

a campaign for election. For purposes of these complaints, the pertinent portion of RCW 42.52.180 provides as follows:

(1) No state officer or state employee may use or authorize the use of facilities of an agency, directly or indirectly, for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition. Knowing acquiescence by a person with authority to direct, control, or influence the actions of the state officer or state employee using public resources in violation of this section constitutes a violation of this section. Facilities of an agency include, but are not limited to, use of stationery, postage, machines and equipment, use of state employees of the agency during working hours, vehicles, office space, publications of the agency, and clientele lists of persons served by the agency.

(2) This section shall not apply to the following activities:

. . .

(c) Activities that are part of the normal and regular conduct of the office or agency; . . .

In addition to the above restrictions as to the use of public facilities for campaign purposes, RCW 42.52.185 places time restrictions on mailings by legislators. A violation of this statute is a violation of RCW 42.52.180. RCW 42.52.185 provides in pertinent part:

(1) During the twelve month period beginning on December 1st of the year before a general election for a state legislator's election to office and continuing through November 30th immediately after the general election, the legislator may not mail, either by regular mail or electronic mail, to a constituent at public expense a letter, newsletter, brochure, or other piece of literature, except as follows:

(a) The legislator may mail two mailings of newsletters to constituents. All newsletters within each mailing must be identical as to their content but not as to the constituent name or address. One such mailing may be mailed no later than thirty days after the start of a regular legislative session, The other mailing may be mailed no later than sixty days after the end of a regular legislative session.

(b) The legislator may mail an individual letter [under certain defined circumstances.]

(2) For purposes of subsection (1) of this section, 'legislator' means a legislator who is a 'candidate,' as defined by RCW 42.17.020, for any public office.

(3) A violation of this section constitutes use of the facilities of a public office for the purpose of assisting a campaign under RCW 42.52.180.

B. Analysis

1. Mailing Restrictions

The mailing restrictions found in RCW 42.52.185(1) prohibit legislators from mailing at public expense, a "letter, newsletter, brochure, or other piece of literature" to constituents, before December 1 of a year in which the legislator ran for election, except under the limited circumstances set forth therein.

There is no doubt, given the facts found in the investigation, that the mailing in question violates RCW 42.52.185(1). The document was a "letter, newsletter, brochure, or other piece of literature," it was sent at public expense, and it was mailed before December 1 of a year in which Representative Huff was a candidate for the office of state representative. None of the exceptions to this provision in the statute apply. Even if the document could be considered a newsletter for purposes of the first exception, it was not mailed during the permissible time periods. Nor was the document an individual letter within the second exception.

However, there are certain facts revealed by the investigation which cause us not to find reasonable cause that Representative Huff violated RCW 42.52.185. All House staff had been properly instructed by House Ethics Counsel about the requirements of RCW 42.52.185. The employee in House Production Services who was responsible for mailing the document stated that he was aware of the need to comply with the December 1 mailing date, but acted in haste and unintentionally failed to take the necessary steps to ensure that the document would not be mailed out before that time. This error affected thirteen representatives whose documents were mailed before December 1, including Representative Huff. No evidence was found that Representative Huff or his staff participated in the decision to mail the document before December 1, or that he or they were aware that it would be mailed before that date. To the contrary, the printing order submitted on behalf of Representative Huff clearly stated the mailing was to be accomplished during the December 1-3, 1998 time period.

2. Content of Document

The second allegation in the complaints has to do with the content of the document which was mailed. It does not appear to be a newsletter, as that term is commonly understood. Rather, it is a highly partisan piece that in some respects resembles campaign literature. The complainants question the use of taxpayer funds to pay for such a document to be produced and mailed. This Board has recognized that it is generally acceptable for legislators to express their positions on legislative issues in partisan terms. It is not proper to include partisan material unrelated to state legislative issues. We find these documents do relate to legislative issues. However, that is not to say that if a document of this nature were sent at a different time than two years before the next election that we would find no violation. The Board could easily find this to be a campaign document, but given the fact that it is so far removed from the next election we do not find that there is reasonable cause to believe it is "for the purpose of assisting a campaign for election of a person to an office.

The Board's sole jurisdictional authority is to review matters according to the State Ethics Act. We have no authority to enforce the policies and procedures of either house of the Legislature, except rules adopted pursuant to the State Ethics Act. The House and Senate are free to adopt and enforce policies more restrictive than those found in the Act. We determine whether the State Ethics Act has been violated and, in this case, it has not.

V. Conclusion And Order

Based on a review of the complaints and the Board's investigation, the Board determines that there is not reasonable cause to believe that Representative Huff committed a violation of RCW 42.52.180 or RCW 42.52.185. The complaints are, therefore, dismissed.

William Asbury, Chair